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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,944	04/05/2001	Robert Mann Bradbury	912.39939X00	4370

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EXAMINER

KEENAN, JAMES W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 10/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,944

Applicant(s)

BRADBURY ET AL.

Examiner

James Keenan

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-28 and 30-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-27 is/are allowed.
- 6) ☒ Claim(s) 1,3-11,13-18,30 and 32-34 is/are rejected.
- 7) ☒ Claim(s) 12,28 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3652

1. The oath or declaration is defective because:

It does not identify the city and either state or foreign country of residence of each inventor. The residence information may be provided on either on an application data sheet or supplemental oath or declaration.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 3, 5-11, 13-15, 17-18, 30, and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hinchcliffe et al (US 4,303,366) in view of Lodi et al (US 4,575,301).

Hinchcliffe et al show a carrier 16, 18, 20 for receiving full container 14 in a first receiving orientation and moving means 23 for independently rotating and translating the carrier (col. 3, lines 46-52) to a second unloading orientation where the contents of the container are unloaded.

Hinchcliffe et al do not show the rotating and translating means to operate concurrently.

Lodi et al show a generally similar cigarette tray unloading apparatus wherein means for translating and rotating the tray operate concurrently, as noted by applicant.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Hinchcliffe et al such that the translating and rotating means operated concurrently, as suggested by Lodi et al, as this would provide more efficient operation and greater flexibility.

Art Unit: 3652

Re claim 7, note elevator 38 of Hinchcliffe et al which receives an unloaded container from the carrier at an intermediate position.

Re claim 9, Hinchcliffe et al as modified do not show the position at which the translating means locates the carrier at the unloading position to be determined by reference to a dimension of the container or its contents. Nevertheless, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified Hinchcliffe et al with such a feature, as this would allow different sizes or types of containers and/or articles to be unloaded, particularly since no specific *means for determining a dimension* has been disclosed.

Re claim 10, although Hinchcliffe et al as modified do not explicitly disclose the initial movement of the container away from the receiving position to include both translational and rotational components, the controls necessary to effect such a movement are inherent. Therefore, to have operated Hinchcliffe et al in such a manner would have been an obvious design expediency if the nature of the articles to be unloaded warranted this movement.

Re claim 11, to have included in either the translating or rotating means a means for moving the carrier to a "preferred position", as broadly claimed, following a stoppage, is considered an obvious and well known operational safety feature.

Re claims 13-15, note in Hinchcliffe et al conveying means 26, 28 which extend across an open end of the container except at a conveying path for the articles to be unloaded, as clearly seen in fig. 3.

Art Unit: 3652

4. Claims 1 and 3-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmermund (US 3,190,478) in view of Lodi et al.

Schmermund shows an apparatus generally similar to that of Hinchcliffe et al wherein the means for translating and rotating operate sequentially rather than concurrently. Contrary to applicant's assertion, the translating and rotating means are independently controlled by motors M1, M3, respectively. Note that, as broadly claimed in at least claim 1, the translating means could also be considered to be the vertical slide which is independently controlled by motor M2.

As noted above, Lodi et al show concurrent operation of translating and rotating means.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified Schmermund such that the translating and rotating means operated concurrently, as suggested by Lodi et al, as this would provide more efficient operation and greater flexibility.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hinchcliffe et al in view of Lodi et al, as applied to claims 13 or 14 above, and further in view of Hinchcliffe et al (US 3,985,252).

Although Hinchcliffe et al ('366) show photocell detector 42 which can be used to control the rotating means and stack delivery conveyors 32, 34, thereby maintaining a desirable level of articles in the conveying path, there is no explicit disclosure that such a level is the same as that of the conveying means.

Art Unit: 3652

Hinchcliffe et al ('252) show a similar apparatus in the same environment wherein various controls are used to ensure that the level of articles 19' in a conveying path remains constant with that of the conveyors.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Hinchcliffe et al ('366) with more sophisticated control means to maintain the level of articles in the conveying path constant with the conveyors, as shown by Hinchcliffe et al ('252), as this would simply be an art recognized expediency.

6. Applicant's arguments with respect to claims 1, 3-11, and 13-18 have been considered but are moot in view of the new ground(s) of rejection.

7. Claims 19-27 are allowed.

8. Claims 12, 28 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3652

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 308-2559.

The fax phone number for the organization where this application or proceeding is assigned is 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1113.

jwk
October 3, 2003


JAMES W. KEENAN
PRIMARY EXAMINER